

RECORDATION NO.

57.3-H

Filed & Recorded

AUG 18 1970 - 9 AM

INTERSTATE COMMERCE COMMISSION

PURCHASE ORDER ASSIGNMENT

EXECUTED IN 10 COUNTERPARTS
OF WHICH THIS IS NO. 8

AGREEMENT dated as of August 17, 1970 between MAINE CENTRAL RAILROAD COMPANY, a Maine corporation (herein called "Assignor"), and U. S. STEEL LEASING CO., INC., a Delaware corporation (herein called "Assignee").

W I T N E S S E T H :

WHEREAS, Assignor has heretofore submitted to ACF Industries Incorporated (herein called "Seller") its purchase order No. P-36041 dated July 30, 1970 (said purchase order, as the same has heretofore been or may hereafter from time to time be amended, modified or supplemented in the manner permitted hereby, being herein called the "Purchase Order") relating to the purchase by Assignor from Seller of 250 70-ton 50' 6" steel-sheathed box cars with ACF freight saver center-of-car cushioning and roller bearings (herein called the "Equipment"); and

WHEREAS, Assignee and Assignor have entered into an equipment lease agreement (herein called the "Lease") dated as of August 17, 1970 pursuant to which Assignee, subject to the terms and conditions therein stated, has agreed to acquire the Equipment and lease same to Assignor; and

WHEREAS, the obligation of Assignee under the Lease to acquire the Equipment and lease same to Assignor is conditioned, among other things, upon the execution and delivery of an assignment of the Purchase Order substantially in the form of this Assignment;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Assignor hereby sells, assigns, transfers and sets over to Assignee all of Assignor's right, title and interest under, in, to and in respect of the Purchase Order, including (without limitation) the right of Assignee to take title to the Equipment and be named as "buyer" in any documents of title, bills of sale, invoices or other similar documents delivered by Seller in respect of the Equipment; provided, however, that so long as Assignee shall not have notified Seller in writing that an Event of Default (as defined in the Lease) has occurred and is continuing, Assignor may exercise all rights

available to it under the Purchase Order (including the right to enter into change orders) except for the right assigned hereunder referred to above.

2. Notwithstanding the fact that that Assignee has agreed to acquire the Equipment pursuant to the terms and subject to the conditions of the Lease, Assignor shall at all times remain liable to Seller under the Purchase Order to perform all of the duties and obligations of the buyer thereunder, including (without limitation) the payment of the purchase price for the Equipment to the same extent as if this Assignment and the Seller's Consent and Agreement (herein called the "Consent and Agreement") attached hereto had not been executed and notwithstanding the exercise by Assignee of any right assigned hereunder. Further, (i) the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from any of its duties or obligations to Seller under the Purchase Order; and (ii) Assignee shall not have any obligation or liability under the Purchase Order by reason of, or arising out of this Assignment or be obligated to perform any of the obligations or duties of Assignor thereunder or to make any payment or to make any inquiry of the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce any right assigned hereunder.

3. Neither this Assignment nor the Consent and Agreement shall in any way increase Seller's obligations or liabilities under the Purchase Order.

4. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Assignee may deem advisable in obtaining the full benefits of this Assignment and of the rights and powers herein granted.

5. Assignor represents and warrants that: (i) the Purchase Order is in full force and effect and is enforceable in accordance with its terms and Assignor is not in default thereunder; and (ii) Assignor has not assigned, pledged or granted a security interest in, and agrees that it will not assign, pledge or grant a security interest in, so long as this Assignment shall remain in effect, the whole or any part of the rights, title and interest hereby assigned, to anyone other than Assignee.

6. Assignor hereby irrevocably designates and appoints Assignee, its successors and assigns, Assignor's true and lawful attorney, with full power (in the name of Assignor or otherwise) to enforce all of the rights, titles and interests which are assigned to Assignee pursuant to this Assignment, including (without limitation) all of Assignor's powers, privileges and remedies under the Purchase Order, with full power to file any claims or take any action or institute any proceedings which Assignee may deem advisable or necessary in the premises. Notwithstanding the provisions of the previous sentence, Assignor agrees that, unless and until it shall receive written notice to the contrary from Assignee given in the manner hereinafter provided in this Assignment, it will diligently pursue and enforce, for the benefit of Assignee, each and every one of its powers, rights, privileges and/or remedies under or in respect of the Purchase Order.

7. In any proceeding brought by Assignor, Seller or any other person involving the enforcement or interpretation of, or otherwise in respect of, the Purchase Order, it shall not be necessary to make Assignee a party to any such proceedings or to join or otherwise involve Assignee in any such proceedings in any manner; provided, however, notwithstanding the foregoing, Assignee shall at all times have the right and privilege to become a party or to be joined or to otherwise become involved in any such proceedings in any manner permitted by law.

8. All notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when deposited in the mails, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company, addressed (i) if to Assignee, in care of U. S. Steel Leasing Co., Inc., 71 Broadway, New York, New York 10006, or at such other address as may hereafter be furnished to Assignor in writing by Assignee; and (ii) if to Assignor, at Maine Central Railroad Company, 242 St. John Street, Portland, Maine 04102, or at such other address as may hereafter be furnished to Assignee in writing by Assignor.

9. Neither this Assignment nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. No failure or delay on the part of Assignee in exercising any right, power or privilege hereunder and no course of dealing between Assignor and Seller or Assignor and Assignee shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of


any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Assignee would otherwise have. No notice to or demand on Assignor in any case shall entitle Assignor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Assignee to any other or further action in any circumstances without notice or demand. This Assignment shall be binding upon Assignor and its successors and assigns and shall be binding upon and inure to the benefit of Assignee and its successors and assigns. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the law of the State of New York.

IN WITNESS WHEREOF, Assignee and Assignor have caused this Assignment to be executed and delivered by their duly authorized officers as of the date first above written.

ASSIGNOR

U. S. STEEL LEASING CO., INC.

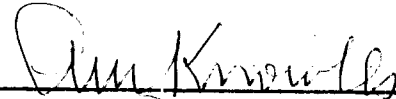
By


V. P. & Treas

ASSIGNEE

MAINE CENTRAL RAILROAD COMPANY

By

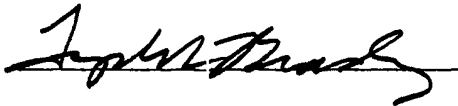

Vice President

STATE OF NEW YORK)
County of New York)SS
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On this 17th day of August, 1970, before me personally appeared C. H. Kraft, to me personally known, who being by me duly sworn, says that he is a Vice President and Treasurer of U. S. STEEL LEASING CO., INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal.)

My commission expires:

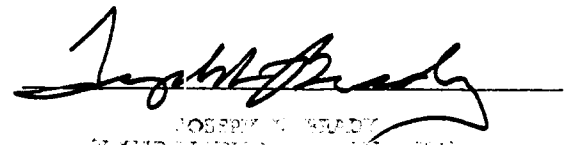

JOSEPH M. BRADY
Notary Public, State of New York
Qualified in Westchester County
Commission Expires March 30, 1972

STATE OF NEW YORK)
County of New York) SS
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On this 17th day of August , 1970, before me personally appeared *A. M. Knowles* , to me personally known, who being by me duly sworn, says that he is a *Vice Pres. of Maine Central R.R. Company* , that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

My commission expires:


JOSEPH W. BRADY
Notary Public in and for the State of New York
My Commission Expires on April 1, 1972

SELLER'S CONSENT AND AGREEMENT

The undersigned, ACF INDUSTRIES, INCORPORATED (herein called "Seller") hereby acknowledges notice of and consents to the foregoing Assignment (herein called the "Assignment", the defined terms therein being herein used with the same meanings) subject to all the terms and conditions thereof and hereby confirms to Assignee that:

(i) all representations, warranties, indemnities and agreements of Seller under the Purchase Order shall inure to the benefit of Assignee to the same extent as if originally named the buyer therein, as well as to the benefit of Assignor;

(ii) Assignee shall not be liable for any of the obligations or duties of Assignor under the Purchase Order except as set forth in the Assignment nor shall the Assignment give rise to any duties or obligations whatsoever on the part of Assignee owing to Seller except as specifically set forth in the Assignment *and the Lease;*

(iii) Seller consents to the lease of the Equipment by Assignee to Assignor under the Lease;

(iv) Seller will not enter into or agree to any change order or any other amendment or supplement to or modification of the Purchase Order which would be prohibited by the provisions of the Assignment;

(v) Seller agrees to cause the Equipment to be marked "owned by and leased from U. S. Steel Leasing Co., Inc., 71 Broadway, New York, New York 10006" prior to the delivery thereof;

(vi) Seller assumes all responsibility for and saves the Assignor and Assignee harmless from any and all damages, costs, losses, claims and expenses arising out of charges of infringement of United States patents which may be alleged to cover the Equipment, or parts thereof, except those patents covering manufacture, sales or use of the Equipment, or parts thereof, designs, devices, parts, arrangements, specialties and equipment furnished or specified by the Assignor and as to such excepted United States patents the Assignor shall in like manner assume responsibility and save Seller harmless. Prompt notice in writing shall be given by each party to the other of

any claim of patent infringement presented to such party with respect to the Equipment, or parts thereof, and the party responsible for such infringement shall promptly undertake and assume defense thereof.

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(vii) Upon delivery and acceptance of the Equipment in accordance with the terms of the Lease title thereto shall vest in the Assignor and upon request of the Assignor the Seller will execute and deliver a Bill of Sale satisfactory in form and substance to the Assignor in favor of the Assignor and furnish such other evidence of title vesting in the Assignor as may be reasonably required by the Assignor;

(viii) all notices, requests, demands or other communications to or upon Seller shall be deemed to have been given or made when deposited in the mails, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company, addressed to Seller at 750 Third Avenue, New York, N.Y. 10017, or such other address as may hereafter be furnished to Assignor and Assignee in writing by Seller; and

(ix) all deliveries of Equipment shall be in the manner required by the provisions of the Lease.

IN WITNESS WHEREOF, Seller has caused this Seller's Consent and Agreement to be executed and delivered by its duly authorized officer as of the date first set forth in the Assignment.

ACF INDUSTRIES, INCORPORATED

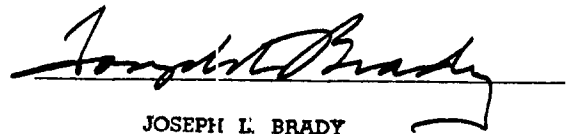
By *Thomas J. ...*
Thomas J. ...

STATE OF NEW YORK)
County of New York) SS
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On this 17th day of August , 1970, before me personally appeared W.C. Anderson to me personally known, who being by me duly sworn, says that he is a Treasurer of ACF Industries, Incorporated, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

My commission expires:



JOSEPH L. BRADY
NOTARY PUBLIC, State of New York
No. 60-5418875
Qualified in Westchester County
Commission Expires March 30, 1972